

STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH
PUBLIC HEALTH HEARING OFFICE

In re: ECON, L.L.C.

Petition No. 2004-1116-053-012
April 28, 2006

MEMORANDUM OF DECISION

Procedural History

On April 11, 2005, the Department of Public Health ("the Department") issued a Statement of Charges ("the Charges") against ECON, L.L.C. ("respondent"), pursuant to §§19a-10 and 19a-14 of the General Statutes, seeking the revocation or imposition of other disciplinary action against respondent's asbestos contractor license number 000255 ("the license"). H.O. Exh. 1.

On May 4, 2005, the Department issued a Notice of Hearing in which the Commissioner of the Department appointed this Hearing Officer to rule on all motions, determine findings of fact and conclusions of law, and issue an order. H.O. Exh. 3.

On May 25, 2005, respondent filed an Answer, admitting some of the allegations in the Charges and denying others. H.O. Exh. 2.

On June 6, June 7, and June 28, 2005, an administrative hearing was held to adjudicate the Charges. The hearing was conducted in accordance with Chapter 54 of the Connecticut General Statutes and §§19a-9-1, et seq. of the Regulations of Connecticut State Agencies ("the Regulations"). At the hearing, James Pero, general manager and owner, represented respondent, and Attorney Linda Fazzina represented the Department.¹

This Memorandum of Decision is based entirely on the record and sets forth this Hearing Officer's findings of fact, conclusions of law, and order. To the extent that the findings of fact actually represent conclusions of law, they should be so considered, and vice versa. *SAS Inst., Inc. v. S & H Computer Systems, Inc.*, 605 F. Supp. 816 (Md. Tenn. 1985).

¹ At the hearing held on June 6, 2005, the Department moved to amend the Charges, without objection from respondent, to delete the reference to §20-4406 of the Regulations and to substitute a reference to §20-440-6(b), and to delete Paragraph 3j of the Charges. The Motion to Amend was granted by the undersigned on that date. Tr. I, p. 16. At the hearing held on June 7, 2005, respondent admitted paragraphs 23b through 23d of the Charges. Tr. II, p. 161. At the hearing held on June 28, 2005, the Department moved to amend the Charges, without objection from respondent, to delete the reference to §19-332a-4(b)(8) of the Regulations and to substitute a reference to §19-332a-4(b)(4). The Motion to Amend was granted by the undersigned on that date. Tr. III, p. 3. As used herein, "Tr. I," "Tr. II" and "Tr. III" refer to the transcripts of June 6, June 7 and June 28, 2005, respectively.

Allegations

A. First Count

1. In paragraph 1 of the Charges, the Department alleges that respondent is, and has been at all times referenced in the Charges, the holder of Connecticut asbestos contractor license number 000255.
2. In paragraph 2 of the Charges, the Department alleges that in or about November and/or December 2003, respondent performed an asbestos abatement project at 480 Bunnell Street, Bridgeport, Connecticut (hereinafter the Bridgeport property).
3. In paragraph 3 of the Charges, the Department alleges that on or about December 4, 2003, in connection with the asbestos abatement project at the Bridgeport property, respondent violated §§19a-332a-1 to 19a-332a-16, inclusive, of the Regulations, in one or more of the following ways, in that it:
 - a. failed to post warning signs at all approaches to the third floor and/or the second floor work area(s), in violation of §19a-332a-5(a) of the Regulations;
 - b. failed to cover all wall surfaces in the third floor work area with polyethylene sheeting or the equivalent, in violation of §19a-332a-5(e) of the Regulations;
 - c. failed to use wet cleaning techniques and/or high efficiency particulate air ("HEPA") filtered vacuuming in the third floor and/or the second floor work area(s), in violation of §19a-332a-5(g) of the Regulations;
 - d. failed to adequately wet all asbestos containing materials to be removed or disturbed by removal in the third floor and/or the second floor work area(s), in violation of §19a-332a-7(a) of the Regulations;
 - e. failed to properly operate and/or maintain a remote worker decontamination system ("WDS"), in one or more of the following ways:
 - i) failed to have a HEPA filtered vacuum in the third floor and/or the second floor work area(s) so that personnel could remove visible asbestos debris from their persons before proceeding to a remote WDS, in violation of §19a-332a-6(c) of the Regulations; and/or
 - ii) failed to provide warm water and/or any source of water to the shower, in violation of §19a-332a-6(a) of the Regulations;
 - f. failed to ensure that waste water generated during asbestos abatement was filtered by best available technology prior to discharge, in violation of §19a-332a-5(i) of the Regulations, in that water from the WDS shower was not being filtered;
 - g. failed to restrict work area access to authorized personnel afforded proper protective clothing, in violation of §19a-332a-5(f) of the Regulations in that workers were

wearing street clothing under Tyvek suits;

- h. failed to adequately wet all asbestos containing waste in the third floor and/or the second floor work area(s) with an amended water solution before placing it in leak-tight containers, in violation of §19a-332a-5(j) of the Regulations; and/or,
 - i. failed to provide negative pressure ventilation units with HEPA filtration in sufficient numbers to allow at least one air change every fifteen minutes in the third floor and/or the second floor work area(s), in violation of §19a-332a-5(h) of the Regulations.
4. In paragraph 4 of the Charges, the Department alleges that the above described facts constitute grounds for disciplinary action pursuant to §§20-440 and/or 19a-332a of the General Statutes, taken in conjunction with §§19a-332a-1, 19a-332a-2, 19a-332a-5(a), 19a-332a-5(e), 19a-332a-5(f), 19a-332a-5(g), 19a-332a-5(h), 19a-332a-5(i), 19a-332a-5(j), 19a-332a-5(k), 19a-332a-6, 19a-332a-7(a), 20-440-1 and/or 20-440-6(b) of the Regulations.

B. *Second Count*

5. In paragraph 5 of the Charges, the Department incorporates paragraphs 1 and 2 of the Charges by reference as if set forth in full.
6. In paragraph 6 of the Charges, the Department alleges that in or about November 2003, respondent performed asbestos abatement at the Bridgeport property, in violation of §19a-3-332a-2 of the Regulations in that respondent swept and/or bagged asbestos containing materials without using the required engineering controls for asbestos abatement projects, including, but not limited to, the following:
- a. adequate wetting, as required by §§19a-332a-5(j) and/or 19a-332a-7(a) of the Regulations;
 - b. negative pressure ventilation units, as required by §19a-332a-5(h) of the Regulations;
 - c. airtight barriers, as required by §19a-332a-5(c) of the Regulations;
 - d. polyethylene sheeting, as required by §19a-332a-5(e) of the Regulations; and/or
 - e. a WDS, as required by §19a-332a-6 of the Regulations.
7. In paragraph 7 of the Charges, the Department alleges that the above described facts constitute grounds for disciplinary action pursuant §§20-440 and/or 19a-332a of the General Statutes, taken in conjunction with §§19a-332a-1, 19a-332a-2, 19a-332a-5(c), 19a-332a-5(e), 19a-332a-5(h), 19a-332a-5(j), 19a-332a-6, 19a-332a-7(a), 20-440-1 and/or 20-440-6(b) of the Regulations.

C. Third Count

8. In paragraph 8 of the Charges, the Department incorporates paragraphs 1 and 2 of the Charges by reference as if set forth in full.
9. In paragraph 9 of the Charges, the Department alleges that on or about November 2, 2003, respondent failed to notify the Department of all asbestos containing materials to be removed by respondent from the facility on the Bridgeport property, in violation of §19a-332a-3(c)(7) of the Regulations.
10. In paragraph 10 of the Charges, the Department alleges that the above described facts constitute grounds for disciplinary action pursuant to §§20-440 and/or 19a-332a of the General Statutes, taken in conjunction with §§19a-332a-1, 19a-332a-2, 19a-332a-3(c)(7), 20-440-1 and/or 20-4406(b) of the Regulations.

D. Fourth Count

11. In paragraph 11 of the Charges, the Department alleges that on or about December 29, 2003, in connection with the asbestos abatement project at the Bridgeport property, respondent violated the Regulations, in one or more of the following ways, in that it:
 - a. failed to restrict work area access to authorized personnel afforded proper respiratory protection and/or protective clothing, in violation of §19a-332a-5(f) of the Regulations;
 - b. applied a coating of encapsulant, in one or more work areas, before the surfaces in said work area(s) had been visually inspected by an asbestos consultant and found to be free of all visible residue, in violation of §19a-332a-7(c) of the Regulations;
 - c. failed to seal airtight, with polyethylene sheeting, all openings between the work area(s) and the non-work area(s), in violation of §19a-332a-5(c) of the Regulations, in that one or more barriers in one or more work areas were breached and/or collapsing; and/or
 - d. failed to provide, in one or more work areas, negative pressure ventilation units with HEPA filtration in sufficient number to allow at least one air change every fifteen minutes, in violation of §19a-332a-5(h) of the Regulations.
12. In paragraph 12 of the Charges, the Department alleges that the above described facts constitute grounds for disciplinary action pursuant to §§20-440 and/or 19a-332a of the General Statutes, taken in conjunction with §§19a-332a-1, 19a-332a-2, 19a-332a-5(c), 19a-332a-5(f), 19a-332a-5(h), 19a-332a-7(c), 20-440-1 and/or 20-440-6(b) of the Regulations.

E. Fifth Count

13. In paragraph 13 of the Charges, the Department alleges that on or about October 4, 2004,

respondent failed to provide and/or maintain complete and/or accurate records of the asbestos abatement project at the Bridgeport property, in violation of §19a-332a-4 of the Regulations, in one or more of the following ways, in that it:

- a. failed to provide verification that the asbestos containing waste was properly disposed of, as required by §§19a-332a-4(b)(4) and/or 19a-332a-4(b)(8) of the Regulations;
 - b. failed to provide the methodology and results of all air sampling conducted during the abatement, as required by §19a-332a-4(b)(5) of the Regulations;
 - c. failed to provide documentation to demonstrate compliance with post abatement reoccupancy criteria, as required by §19a-332a-4(b)(9) of the Regulations;
 - d. failed to provide a summary of procedures, as required by §19a-332a-4(b)(3) of the Regulations; and/or
 - e. failed to maintain a log of control of access to each work area, as required by §19a-332a-4(b)(7) of the Regulations.
14. In paragraph 14 of the Charges, the Department alleges that the above described facts constitute grounds for disciplinary action pursuant to §§20-440 and/or 19a-332a of the General Statutes, taken in conjunction with §§19a-332a-1, 19a-332a-2, 19a-332a-4, 20-440-1 and/or 20-440-6(b) of the Regulations.

F. Sixth Count

15. In paragraph 15 of the Charges, the Department incorporates paragraph 1 of the Charges by reference as if set forth in full.
16. In paragraph 16 of the Charges, the Department alleges that in or about July and/or August 2003, respondent performed an asbestos abatement project at the former Bridgeport Jai Alai, 255 Kossuth Street, Bridgeport, Connecticut (hereinafter Jai Alai property).
17. In paragraph 17 of the Charges, the Department alleges that on or about November 17, 2003, and/or on or before November 17, 2003, in connection with the asbestos abatement project at the Jai Alai property, respondent violated the Regulations, in one or more of the following ways, in that it:
- a. stored asbestos containing waste in one or more dumpsters that were not leak-tight, in violation of §19a-332a-5(j) of the Regulations; and/or
 - b. failed to properly label one or more dumpsters holding asbestos waste, in violation of §19a-332a-5(k) of the Regulations.
18. In paragraph 18 of the Charges, the Department alleges that the conditions it alleges in

paragraph 17 continued from on or about November 17, 2003, to on or about December 4, 2003.

19. In paragraph 19 of the Charges, the Department alleges that subsequently, in or about October 2004, respondent failed to provide documentation that the asbestos containing waste from the asbestos abatement project at the Jai Alai property was properly disposed of, as required by §§19a-332a-4(b)(4) and/or 19a-332a-4(b)(8) of the Regulations.
20. In paragraph 20 of the Charges, the Department alleges that the above described facts constitute grounds for disciplinary action pursuant to §§20-440 and/or 19a-332a of the General Statutes, taken in conjunction with §§19a-332a-1, 19a-332a-4, 19a-332a-5(j), 19a-332a-5(k), 20-440-1 and/or 20-440-6(b) of the Regulations.

G. *Seventh Count*

21. In paragraph 21 of the Charges, the Department incorporates paragraph 1 of the Charges by reference as if set forth in full.
22. In paragraph 22 of the Charges, the Department alleges that in or about the summer of 2004, respondent performed an asbestos abatement project at 1265 Fairfield Beach Road, Fairfield, Connecticut (hereinafter the Fairfield property).
23. In paragraph 23 of the Charges, the Department alleges that in or about August 2004, in connection with the asbestos abatement project at the Fairfield property, respondent violated the Regulations, in one or more of the following ways, in that it removed asbestos containing transite from an enclosed porch without using the required engineering controls for asbestos abatement projects, including, but not limited to:
 - a. adequate wetting, as required by §§19a-332a-5(j) and/or 19a-332a-7(a) of the Regulations;
 - b. negative pressure ventilation units, as required by §19a-332a-5(h) of the Regulations;
 - c. air-tight barriers, as required by §19a-332a-5(c) of the Regulations;
 - d. polyethylene sheeting, as required by §19a-332a-5(e) of the Regulations; and/or
 - e. wet cleaning and HEPA filtered vacuuming cleaning techniques, as required by §19a-332a-5(g) of the Regulations.
24. In paragraph 24 of the Charges, the Department alleges that in or about August 2004, in connection with the asbestos abatement project at the Fairfield property, respondent failed to notify the Department of all asbestos containing materials to be removed by respondent from the facility on the Fairfield property, in violation of §19a-332a-3(c)(7) of the Regulations and/or to pay the requisite notification fee, in violation of §19a-332a(c) of the General Statutes.

25. In paragraph 25 of the Charges, the Department alleges that the above described facts constitute grounds for disciplinary action pursuant to §§20-440 and/or 19a-332a of the General Statutes, taken in conjunction with §§19a-332a-1, 19a-332a-2, 19a-332a-3(c)(7), 19a-332a-5(c), 19a-332a-5(e), 19a-332a-5(g), 19a-332a-5(h), 19a-332a-5(j), 19a-332a-7(a), 20-440-1 and/or 20-440-6(b) of the Regulations.

H. Eighth Count

26. In paragraph 26 of the Charges, the Department incorporates paragraphs 1 and 22 of the Charges by reference as if set forth in full.
27. In paragraph 27 of the Charges, the Department alleges that on or about August 11, 2004, in connection with the asbestos abatement project at the Fairfield property, respondent violated the Regulations, in one or more of the following ways, in that it:
- a. failed to post warning signs at all approaches to the first floor work area(s), as required by §19a-332a-5(a) of the Regulations;
 - b. removed asbestos containing floor tile from one or more rooms on the first floor of the Fairfield property, without using the required engineering controls, including, but not limited to, the following:
 - i) adequate wetting, as required by §19a-332a-7(a) of the Regulations;
 - ii) negative pressure ventilation units, as required by §19a-332a-5(h) of the Regulations;
 - iii) air-tight barriers, as required by §19a-332a-5(c) of the Regulations; and/or
 - iv) polyethylene sheeting, as required by §19a-332a-5(e) of the Regulations;
 - c. failed to remove all moveable objects from the first floor work area(s), in violation of §19a-332a-5(d) of the Regulations; and/or
 - d. failed to utilize clean up procedures, until no visible residue was observed in the first floor work area(s), in violation of §§19a-332a-5(g) and/or 19a-332a-12 of the Regulations.
28. In paragraph 28 of the Charges, the Department alleges that the conditions it alleges in paragraph 27 continued from on or about August 11, 2004, to August 17, 2004.
29. In paragraph 29 of the Charges, the Department alleges that the above described facts constitute grounds for disciplinary action pursuant to §§20-440 and/or 19a-332a of the General Statutes, taken in conjunction with §§19a-332a-1, 19a-332a-2, 19a-332a-5(a), 19a-332a-5(c), 19a-332a-5(d), 19a-332a-5(e), 19a-332a-5(g), 19a-332a-5(h), 19a-332a-7(a), 19a-332a-12, 20-440-1 and/or 20-440-6(b) of the Regulations.

I. Ninth Count

30. In paragraph 30 of the Charges, the Department incorporates paragraphs 1 and 22 of the Charges by reference as if set forth in full.
31. In paragraph 31 of the Charges, the Department alleges that on or about August 26, 2004, in connection with the asbestos abatement project at the Fairfield property, respondent violated the Regulations, in one or more of the following ways, in that it:
 - a. failed to utilize clean up procedures, until no visible residue was observed in the first floor work area(s), in violation of §§19a-332a-5(g) and/or 19a-332a-12 of the Regulations; and/or
 - c. failed to remove all moveable objects from the work area(s), failed to clean all moveable objects to be salvaged or reused and/or failed to dispose of all moveable objects, that could not be salvaged or reused, as asbestos waste, in violation of §19a-332a-5(d) of the Regulations.
32. In paragraph 32 of the Charges, the Department alleges that the above described facts constitute grounds for disciplinary action pursuant to §§20-440 and/or 19a-332a of the General Statutes taken in conjunction with §§19a-332a-1, 19a-332a-2, 19a-332a-5(d), 19a-332a-5(g), 19a-332a-12, 20-440-1 and/or 20-440-6(b) of the Regulations.

J. Tenth Count

33. In paragraph 33 of the Charges, the Department incorporates paragraphs 1 and 22 of the Charges by reference as if set forth in full.
34. In paragraph 34 of the Charges, the Department alleges that in or about October 2004, respondent failed to provide the Department with records of the asbestos abatement project at the Fairfield property, in violation of §19a-332a-4(a) of the Regulations.
35. In paragraph 35 of the Charges, the Department alleges that on or about December 2, 2004, respondent failed to provide verification that the asbestos containing waste was properly disposed of, as required by §§19a-332a-4(b)(8) and/or 19a-332a-5(l) of the Regulations.
36. In paragraph 36 of the Charges, the Department alleges that the above described facts constitute grounds for disciplinary action pursuant to §§20-440 and/or 19a-332a of the General Statutes, taken in conjunction with §§19a-332a-1, 19a-332a-2, 19a-332a-4, 19a-332a-5(l), 20-440-1 and/or 20-440-6(b) of the Regulations.

Findings of Fact

1. Respondent is, and has been at all times referenced in the Charges, the holder of Connecticut asbestos contractor license number 000255. H.O. Exh. 2.

2. At the time of hearing, and at all times referenced in the Charges, James Pero was respondent's general manager and owner. Tr. I., p. 2-3.

A. First Count

3. From on or about December 1, 2003, to on or about January 23, 2004, respondent performed an asbestos abatement project at the Bridgeport property. Tr. II, pp. 7, 17.
4. The Bridgeport property was a four-story vacant building formerly used for manufacturing. Dept. Exhs. 1, 4; Tr. I, pp. 114-116.
5. The Department did not approve an Alternative Work Practice (AWP) for the Bridgeport property until January 14, 2004. A previous AWP approved by the Department for the asbestos abatement of various properties owned by the Bridgeport Economic Development Corporation of the City of Bridgeport did not pertain to the Bridgeport property. Dept. Exh. 6; Tr. I, pp. 34-38, 148-149, 154.
6. On December 4, 2003, in connection with the asbestos abatement performed by respondent at the Bridgeport property:
 - a. no warning signs were placed at the entrances of the work sites on the second and third floor work areas;
 - b. no polyethylene sheeting was used to cover the wall surfaces on the third floor work areas;
 - c. no wet cleaning techniques or HEPA filtered vacuums were used at the second or third floor work sites;
 - d. no source of water was available to wet asbestos containing materials for removal, and the asbestos materials on the second and third floor work areas were handled dry;
 - e. there was no source of water (including warm water) to the remote WDS that served the second and third floor work sites, and the workers in the second and third floor work areas were not provided with HEPA-filtered vacuums to remove visible asbestos debris from their persons before they proceeded to the WDS from the work areas;
 - f. the filter unit located at the property to filter waste water from the WDS prior to discharge lacked electrical power and was not hooked up to the WDS;
 - g. workers in the second and third floor work areas were wearing Tyvak suits over their street clothes, and did not change into other street clothes after removing their Tyvak suits upon leaving the work areas;
 - h. no amended water solution was used on asbestos containing waste before it was bagged in leak-tight containers in the second and third floor work areas; and,

- i. no negative pressure ventilation units with HEPA filtration were used in the third floor work area, and there was insufficient negative pressure ventilation units with HEPA filtration in the second floor work area to allow at least one air change every fifteen minutes;

Dept. Exhs. 1, 3 (photos, 1-10, 12, 14, 15, 22); Tr. I, pp. 36, 37, 41-44, 47-54, 56-62, 72, 75-85, 88, 89, 91, 93, 94;

B. Second Count

7. In or about November, 2003, in connection with the asbestos abatement performed at the Bridgeport property, respondent swept and bagged asbestos containing materials without the following engineering controls:

- a. no water was used to remove loose asbestos pipe covering and asbestos containing pipe covering was picked up and bagged dry by respondent;
- b. no negative pressure HEPA ventilation units were used;
- c. the work areas were not isolated from non-work areas with air-tight barriers;
- d. no polyethylene sheeting or its equivalent was used to cover surfaces; and,
- e. no WDS was set up for employees;

Dept. Exhs. 1, 2, Exh. 3 (photos. 16, 17, 23, 24); Tr. I, pp. 65-72, 89, 94, 95, 131, 132.

C. Third Count

8. In or about November, 2003, respondent failed to amend its original notification to the Department regarding the additional asbestos containing material it removed from the Bridgeport property. Dept. Exhs. 1, 2; Tr. I, pp. 62-74, 107-114.

D. Fourth Count

9. On or about December 29, 2003, in connection with the asbestos abatement performed by respondent at the Bridgeport property:
 - a. authorized personnel entered and left work areas without proper respiratory protection or protective clothing;
 - b. a coating of encapsulant was applied to a portion of the work areas without an inspection being performed by a asbestos contractor;
 - c. work areas were not sealed air-tight with polyethylene sheeting; and,
 - d. negative pressure ventilation units with HEPA filtration were not in operation at the work areas.

Dept. Exh. 1; Tr. I, pp. 134-137, 140-145.

E. Fifth Count

10. On or about October 4, 2004, respondent failed to provide accurate and complete records of the asbestos abatement performed at the Bridgeport property in that respondent:
 - a. failed to provide records demonstrating that the asbestos containing waste generated at the Bridgeport property were properly disposed of;
 - b. failed to provide records regarding any air sampling performed at the property;
 - c. failed to provide documentation to demonstrate compliance with the post abatement reoccupancy requirements of the Regulations;
 - d. failed to provide a summary of procedures; and,
 - e. failed to provide a log of employees' access to each work area.

Dept. Exhs. 1, 7; Tr. I, pp. 15179.

F. Sixth Count

11. In or about July and/or August 2003, respondent performed an asbestos abatement project at the Jai Alai property. Dept. Exhs. 9, 10.
12. On or around November 17, 2003, in connection with the abatement project performed at the Jai Alai property, respondent:
 - a. failed to store asbestos containing waste in leak tight dumpsters or containers; and,
 - b. failed to properly label two of the seven dumpsters holding asbestos waste.

Dept. Exhs. 9-11; Tr. II., pp. 114-118.

13. The conditions that existed at the Jai Alai property on November, 17, 2003, continued until at least December 4, 2003. Dept. Exhs. 9, 11, 12 ; Tr. II., pp. 118-130.
14. On or about October 2004, respondent failed to provide the Department with records demonstrating that the asbestos waste from the asbestos abatement project conducted at the Jai Alai property was properly disposed of. Dept. Exh. 13; Tr. II, pp. 130-131.

G. Seventh Count

15. In or about the summer of 2004, respondent performed an asbestos abatement project at the Fairfield property. Dept. Exhs. 14, 15.

16. On or about August 4, 2004, in connection with the removal of asbestos containing transite from an enclosed porch at the Fairfield property, respondent failed to:
 - a. adequately wet the asbestos containing materials prior to their removal;
 - b. use negative pressure ventilation units;
 - c. isolate the work area from non-work areas with airtight barriers;
 - d. cover all floor and wall surfaces in the work areas with polyethylene sheeting; and,
 - f. use wet cleaning or HEPA filtered vacuuming during the abatement process.

Dept. Exhs. 14, 16 (photos 1-11, 13-26), 17; Tr. II, pp. 161-185, 188, 189.

17. In or about August, 2004, respondent removed asbestos containing transite shingles from an enclosed porch at the Fairfield property without notifying the Department, or paying the requisite fee to the Department for the removal of those materials. Dept. Exhs. 14, 15, 16 (photos, 4-9, 16-18, 20-22, 25, 26), 17; Tr. II, pp. 164-173, 176, 177, 180-186.

H. Eighth Count

18. On or about August 11, 2004, in connection with the removal of asbestos containing floor tiles from the first floor of the Fairfield property, respondent failed to:
 - a. post warning signs at all approaches to the work areas;
 - b. adequately wet the asbestos containing materials prior to their removal;
 - c. use negative pressure ventilation units;
 - d. isolate the work areas from non-work areas with airtight barriers;
 - e. cover all floor and wall surfaces in the work areas with polyethylene sheeting;
 - f. remove all moveable objects from the first floor; and,
 - g. utilize clean up procedures until no visible residue was observed in the first floor work areas.

Dept. Exhs. 14, 17, 18 (photos 2-11, 13-23), 19; Tr. III, pp. 15-54, 56, 57.

19. The conditions that existed at the Fairfield Property on August 11, 2004, continued to at least August 17, 2004. Dept. Exhs. 14, 20; Tr. III, p. 59-63.

I. Ninth Count

20. On or about August 26, 2004, in connection with the asbestos abatement project at the

Fairfield property, respondent failed to:

- a. utilize clean up procedures until no visible residue was observed in the first floor work areas; and,
- b. remove all moveable objects from the work areas, clean all moveable objects to be salvaged or reused, and dispose of all moveable objects that could not be salvaged or reused as asbestos waste.

Dept. Exhs. 14, 22 (photos 2, 5-10, 14, 19), 23; Tr. III. pp. 73-94.

J. Tenth Count

21. On or about October 2004, respondent failed to provide the Department with complete records of the asbestos abatement project conducted at the Fairfield property. Dept. Exhs. 24-26; Tr. III, p. 97-99.
22. On or about December 2, 2004, respondent failed to provide verification to the Department that the asbestos containing waste generated in connection with the abatement project at the Fairfield property was disposed of properly. Dept. Exhs. 14, 24, 25; Tr. III, pp. 99-116.

Discussion and Conclusions of Law

Pursuant to §20-440-6(b) of the Regulations, the Department may take any action authorized by §19a-17 of the General Statutes against an asbestos contractor who violates any regulation governing asbestos abatement or licensure. Section 19a-332a-2 of the Regulations prohibits any person from engaging in asbestos abatement unless it is in compliance with §§19a-332a-3 to 19a-332a-12 of the Regulations. The Regulations require an asbestos contractor, *inter alia.*, to: (1) notify the Department of all asbestos containing materials to be removed from a facility; (2) provide the Department with records relating to the asbestos abatement project being performed; (3) post warning signs at all approaches to the work area; (4) isolate the work areas from non-work areas by air-tight barriers; (5) remove all moveable objects from the work areas; (6) cover all floors and wall surfaces in the work areas with polyethylene sheeting; (7) restrict work area access to authorized personnel afforded proper protective clothing; (8) employ clean-up procedures that use wet cleaning techniques and/or HEPA filtered vacuuming; (9) provide a sufficient number of HEPA fans to allow at least one work place air change every 15 minutes; (10) ensure that waste water generated during asbestos abatement is filtered by best available technology prior to discharge; (11) ensure that all asbestos-containing material is adequately wetted and stored in leak-tight containers; (12) properly label all

containers holding asbestos waste; (13) dispose of all asbestos containing waste at an authorized asbestos disposal facility; (14) equip all work areas with WDS that includes a warm water shower and, if a remote WDS is required, provide HEPA filtered vacuums in the work areas so that personnel can remove visible asbestos debris from their persons before proceeding to the remote WDS; (15) adequately wet all asbestos containing materials to be removed or disturbed; (16) apply a coating of encapsulant in work areas after the surfaces have been visually inspected and found to be free of all visible residue; and, (17) clean-up all work areas until no visible residue is observed. See, §§19a-332a-3(c), 19a-332a-4(a), 19a-332a-4(b)(3), 19a-332a-4(b)(4), 19a-332a-4(b)(5), 19a-332a-4(b)(7), 19a-332a-4(b)(8), 19a-332a-4(b)(9), 19a-332a-5(a), 19a-332a-5(c), 19a-332a-5(d), 19a-332a-5(e), 19a-332a-5(f), 19a-332a-5(g), 19a-332a-5(h), 19a-332a-5(i), 19a-332a-5(j), 19a-332a-5(k), 19a-332a-5(l), 19a-332a-6(a), 19a-332a-6(c), 19a-332a-7(a), 19a-332a-7(c), and 19a-332a-12 of the Regulations, respectively. Asbestos contractors are also required to pay to the Department the fees required by §19a-332a(c) of the General Statutes.

In establishing such violations, the Department bears the burden of proof by a preponderance of the evidence. *Swiller v. Comm'r. of Public Health*, CV-950705601, Superior Court, J.D. Hartford/New Britain at Hartford, October 10, 1995; *Steadman v. SEC*, 450 U.S. 91, 101 S. Ct. 999, reh'g. den., 451 U.S. 933 (1981); *Bender v. Clark*, 744 F.2d 1424 (10th Cir. 1984); *Sea Island Broadcasting Corp. v. F.C.C.*, 627 F.2d 240, 243 (D.C. Cir. 1980); all as cited in *Bridgeport Ambulance Service, Inc., v. Connecticut Dept. of Health Services*, No. CV 88-0349673-S (Sup. Court, J.D. Hartford/New Britain at Hartford, July 6, 1989); *Swiller v. Commissioner of Public Health*, No. CV 95-0705601 (Sup. Court, J.D. Hartford/New Britain at Hartford, October 10, 1995).

With regards to paragraphs 1, 5, 8, 15, 21, 26, 30, and 33 of the Charges, respondent admits that it held asbestos contractor license number 000255 at all times referenced in the Charges. The Department, therefore, sustained its burden of proving these allegations.

With regard to paragraphs 2, 5, 8, 16, 22, 26, 30, and 33 of the Charges, respondent admits that it performed asbestos abatement projects at the locations alleged therein. The Department, therefore, sustained its burden of proving these allegations.

A. First Count

With regard to paragraph 3a of the Charges, respondent claims that it posted signs at various entrances to the Bridgeport property. The Department's investigator testified that he did

not observe any signs posted at the entrances to the Bridgeport property during his inspection on the day in question, and his testimony is supported by photographic evidence. Respondent's claim, therefore, is not credible. In addition, the Department construes the posting requirement in the Regulations to generally require that warning signs be posted near the entrance to the asbestos abatement work areas themselves, rather than at the outside entrances to a property.² The Department's investigator also credibly testified that he did not observe any signs posted at either the second or third floor work area during his inspection. The Department, therefore, sustained its burden of proving this allegation.

With regard to paragraph 3b of the Charges, respondent admits that the walls on the third floor work area of the Bridgeport property were not covered by polyethylene sheeting. The Department, therefore, sustained its burden of proving this allegation.

With regard to paragraphs 3c, 3d, and 3h of the Charges, the evidence establishes that there was no source of water to either the second or third floor work areas on the day in question, and that no HEPA vacuuming was in use on either floor. Respondent does not claim that HEPA vacuums were in use on either floor, but claims instead that his workers used spray water bottles to wet the asbestos containing materials on both floors before placing those materials in leak-tight containers. The Department's investigator provided credible testimony, however, that he did not observe any evidence of spray bottles in use on either floor, nor did respondent's workers indicate to him that such spray bottles were being used during his inspection on the date in question. In addition, the bagged asbestos containing materials observed by the investigator were not wet, nor did he observe any evidence that they had been wetted prior to being placed in the bags. The Department, therefore, sustained its burden of proving these allegations.

With regard to paragraphs 3e of the Charges, the evidence establishes that respondent did not provide HEPA vacuuming at either the second or third floor work areas to allow workers to decontaminate themselves before proceeding to the remote WDS that had been established, as required by the Regulations. The evidence further established that there was no power or water being supplied to the remote WDS and, therefore, respondent was unable to provide any water,

² The efficacy of the Department's construction of this regulation is borne out by the circumstance of the present case, since there were numerous broken windows and other means of entry into the property other than through the existing external doorways. Posting signs only at the outside doors to the building, therefore, would not have effectively warned persons entering the building through these "informal" entrances that asbestos abatement was occurring in the building. It is also noted that the applicable Regulation, *i.e.*, §19a-332-5(a), requires that signs be posted "at all approaches to the work area," and makes no mention of posting signs at the entrances to the building where asbestos abatement is occurring.

warm or otherwise, to that system as required by the Regulations. The Department, therefore, sustained its burden of proving these allegations.

With regard to paragraph 3f of the Charges, the evidence establishes that although respondent had a filter on site to filter the waste water from the decontamination shower, the filter was not connected to the shower and there was no electrical power on site to operate it. Respondent's claim that it connected the filter to the shower when it was being used, and disconnected the filter when the shower was not in use, is inconsistent with industry practice and is not credible. The Department, therefore, sustained its burden of proving this allegation.

With regard to paragraph 3g of the Charges, the Department's inspector testified that he observed respondent's workers wearing street clothes under their protective Tyvek suits within the work areas. He also testified that he observed no changes of clothes in the clean areas outside the work areas for those workers to change into. The Department, therefore, sustained its burden of proving this allegation.

With regard to paragraph 3i of the Charges, the evidence established that there were no HEPA fans in operation in the third floor work area, and that the single HEPA fan in operation in the second floor work area was not supplying sufficient ventilation to comply with the Regulations. The Department, therefore, sustained its burden of proving this allegation.

Respondent raised two general defenses to the allegations in paragraph 3 of the Charges. First, it claimed that it was not required to maintain the engineering controls set forth in the Regulations because the asbestos containing materials it was removing from the second and third floor work areas at the property were not "friable asbestos containing materials" as defined in the Regulations. Second, it claimed that it had an approved AWP, as defined by §19a-332a-11 of the Regulations, which excused its non-compliance with certain provisions of the Regulations. Neither claim is true.

With regard to its first defense, the Department does permit the intact removal of non-friable asbestos containing materials under certain circumstances. However, the asbestos containing materials respondent removed from the second and third floor work areas were not removed intact but were, instead, removed by being broken up by hand tools. Section 19a-332a-1(d) defines "asbestos abatement" as the "removal, . . . or other disturbance of asbestos-containing materials" Since respondent does not dispute that the materials it was removing from the second and third floor work areas contained asbestos, the act of removing and disturbing those materials constituted "asbestos abatement" within the meaning of the

Regulations. In addition, §19a-332a-1(w) defines “friable asbestos containing materials” to include non-friable asbestos containing materials that “potentially can be broken, crumbled, pulverized or reduced to powder as a result of asbestos abatement” Thus, even if the materials being removed from the second or third floor work area were not originally “friable,” they became “friable,” within the meaning of the Regulations, when respondent removed them with hand tools from the second and third floor work areas.

With regard to its second defense, §19a-332a-11 of the Regulations provides that an AWP may be given for “specified . . . asbestos abatement projects . . . performed within a facility” Respondent did receive an approved AWP for the building in question, but that AWP did not go into effect until after the alleged violations occurred. Respondent may have been covered by another AWP during the relevant time period, but that AWP did not apply to the specific property that is the subject of the alleged violations. Therefore, respondent had no approved AWP that applied to the specific building in question during the time period the alleged violations occurred.

B. Second Count

With regard to paragraph 6 of the Charges, the evidence establishes that respondent conducted asbestos abatement activities at the property some time during November or early December of 2003 without the engineering controls, such as adequate wetting, negative pressure ventilation units, air-tight barriers, polyethylene sheeting and WDS, required by the Regulations and specified in this allegation.

Respondent’s on-site manager conceded that the asbestos abatement was not conducted with the requisite engineering controls, but respondent claims it was not required to comply with these Regulations because it was merely conducting “pre-cleaning” activities prior to commencing its asbestos abatement. However, the Department’s Regulations do not contemplate such “pre-cleaning” activities.

The evidence establishes that during the time period in question, respondent’s workers filled approximately 100 bags with asbestos containing materials gathered from the second and third floors of the property without instituting any of the engineering controls required by the Regulations. (Respondent’s claim that it wet the asbestos containing materials removed from the second and third floor work areas prior to bagging them was considered and rejected for the reasons discussed above.) Section 20-440-1(4) of the Regulations defines asbestos abatement to include the removal or other disturbance of asbestos containing materials. Picking up asbestos

containing materials from the floors of the property and placing those materials in plastic bags, clearly constituted the "removal" or "other disturbance" of asbestos containing materials. The Department, therefore, sustained its burden of proving this allegation.

C. *Third Count*

With regard to paragraph 9 of the Charges, the evidence establishes that respondent did not accurately notify the Department regarding the amount of asbestos containing materials it removed from the property. Respondent claims that the amount of asbestos containing materials actually removed during an asbestos abatement project can vary from the amount specified in the notice supplied to the Department by up to 20% and still meet the applicable regulation. The regulation, however, contains no such exception. In addition, the Department's inspector credibly testified that it is the Department's procedure to require an asbestos abatement contractors to file an amended notice if the amount of asbestos actually removed during an abatement project exceeds the amount of asbestos containing material specified in the notice. In the current case, respondent failed to file any such amended notice. The Department, therefore, sustained its burden of proving this allegation.

D. *Fourth Count*

With regard to paragraphs 11a, c, and d of the Charges, respondent does not dispute that it failed to provide the engineering controls required by the Regulations and specified in these allegations. Instead, it claims that it was not required to comply with these requirements because the asbestos it removed from the property was not friable, and because the property was scheduled for demolition and not reoccupancy.

Respondent's claim that the asbestos materials it removed from the property were not friable was considered and rejected above. Regarding respondent's second defense, the Department requires an asbestos abatement contractor to maintain engineering controls in all abated work areas of a property scheduled for demolition until either successful ambient air tests of each work area have been performed by a licensed project monitor or the building is demolished. In the current case, although respondent claims that air sampling was successfully performed in certain work areas at the Bridgeport property, it never provided proof of those successful tests to the Department. In addition, respondent admits that air tests were not performed in each of the work areas at the property prior to the date in question. The Department, therefore, sustained its burden of proving these allegations.

With regard to paragraph 11b of the Charges, the evidence establishes that respondent applied a coating of encapsulant in one or more work areas before an asbestos project monitor³ had visually inspected the surfaces and found them to be free of all visible residue. Respondent argues that the regulatory section cited in the Charges, *i.e.*, §19a-332a-7(c), does not specifically require that surfaces be inspected by a licensed project monitor before they can be encapsulated. According to respondent, the surfaces at issue in the present case were inspected by one of its own supervisory employees and determined to be free of all visible residue before the encapsulant was applied.

However, considering §19a-332a-7(c) of the Regulations in the context of the overall regulatory scheme governing asbestos abatement projects, it is clear that the visual inspection required before encapsulant is applied must be conducted by a project monitor, and not by someone under the control or within the employ of the asbestos contractor. For example, §20-440-1(29) of the Regulations requires that a project monitor oversee the activities of the asbestos abatement contractor, and §20-440-7(c)(7)(A) of the Regulation requires that a project monitor be trained in conducting visual inspections. The Department's investigator also credibly testified that it is long-established Department policy to require that a licensed project monitor conduct a visual inspection of a work area before encapsulant is applied.

This policy has firm underpinnings in sound public policy. Encapsulation is one of the immediate precursors to clearing a property for post abatement reoccupancy or demolition. *See*, §19a-332a-12 of the Regulations. If an abatement contractor is permitted to make its own determination that an asbestos abatement work area is "free of all visible residue" and, thus, ready for encapsulation, it may inadvertently or purposely encapsulate an area that still contains asbestos. If that were to occur, it would be difficult for the project monitor conducting the post abatement clearance required by §19a-332a-12 of the Regulations to determine if the area is really free of all visible asbestos residue as required by the Regulation. In addition, if the project monitor detects visible residue, it would be more difficult for the abatement contractor to remove that residue once encapsulant had been applied. The Department, therefore, sustained its burden of proving this allegation.

³ A "project monitor," within the meaning of the Regulations, is a "licensed asbestos consultant who is certified as a project monitor and who functions as an on-site representative of the facility owner or other persons by over-seeing the activities of the asbestos abatement contractor." *See*, §20-440-1(29) of the Regulations.

E. Fifth Count

With regard to paragraph 13 of the Charges, the evidence establishes that respondent failed to provide to the Department all of the records required by the Regulations cited in this paragraph despite numerous opportunities to do so. Although respondent did provide some logs regarding worker access to the property in general, such records do not indicate access to specific work areas as required by §19a-332a-4(b)(7) of the Regulations. Logs indicating such access are significant because they document the specific amount of time a worker was admitted to a particular work area, and the specific work area to which they were admitted. The Department, therefore, sustained its burden of proving this allegation.

F. Sixth Count

With regard to paragraph 17a of the Charges, the evidence establishes that respondent stored asbestos containing waste in seven outside dumpsters for several months after completion of an asbestos abatement project. The evidence further establishes that although those dumpsters may have been sealed leak-tight at the time the waste was originally placed in them, the dumpsters were no longer leak-tight when they were observed on two occasions by Department investigators. The Department, therefore, sustained its burden of proving this allegation.

With regard to paragraph 17b of the Charges, the evidence establishes that two of the seven dumpsters were not labeled as containing asbestos waste at the time of the Department's inspection. Respondent admits that the dumpsters were not labeled, but argues that the applicable regulation does not specify the precise point in time when the labels needed to be affixed. The Department acknowledges that the regulation is unclear as to when the dumpsters needed to be labeled, but argues that there are sound policy reasons for requiring that dumpsters be labeled immediately after the asbestos waste is placed into them and they are properly sealed.

To support its position, the Department argues that the asbestos abatement contractor may not know exactly when the sealed dumpsters will be removed from the site, since such removal is generally performed by an independent waste hauler and not the contractor itself. In addition, there was no reason not to label the dumpsters in question when they were originally loaded and sealed since the required labels could easily be protected by plastic or other similar material. Since respondent had an on-going obligation to see that each dumpster remained properly sealed until it was removed from the site, respondent could have periodically inspected the dumpsters to insure that the labels had not been removed or fallen off.

In addition to the reasons advanced by the Department, there is another reason for requiring labeling soon after a dumpster is loaded – enforceability of the labeling regulation. Since the Department lacks the ability to conduct daily inspections of asbestos abatement worksites, it must rely on spot inspections to ensure compliance with the Regulations. Thus, unless a Department inspector observes an unlabeled dumpster at the moment it is being hauled offsite, a contractor could always claim that it intended to affix the proper labels at some later time. Accordingly, it is appropriate to construe §19a-332a5(k) to require that leak-tight containers be properly labeled within a reasonable period of time after they are loaded and sealed.

In the present case, the dumpsters were still not properly labeled more than two months after the completion of the asbestos abatement project at which the waste they contained had been generated. Thus, respondent had plenty of time to affix the labels and no good reason not to have done so. The Department, therefore, sustained its burden of proving this allegation.

With regard to allegation 18 of the Charges, the evidence establishes that the conditions alleged in paragraphs 16 and 17 of the Charges existed from at least on or about November 17, 2003, to on or about December 4, 2003. The Department, therefore, sustained its burden of proving this allegation.

With regard to allegation 19 of the Charges, the evidence establishes that respondent failed to provide the Department with complete documentation to establish that the asbestos waste from the Jai Alai property had been properly disposed of as required by the applicable Regulations. The Department, therefore, sustained its burden of proving this allegation.

G. *Seventh Count*

With regard to allegation 23a and e of the Charges, the Department's investigator testified, and the respondent does not dispute, that there was no electric power or water service to the Fairfield Property when respondent conducted asbestos abatement at the property. Respondent claims that it adequately wetted the asbestos containing materials, and used HEPA filtering vacuuming techniques, at the time of their removal by running a hose and an electric cord across a town road from a house across the street from the Fairfield property. The Department's investigator credibly testified that he saw no evidence that the bagged asbestos containing materials he observed during his inspection had ever been wetted. Accordingly, respondent's testimony that it adequately wetted the asbestos containing materials at issue, and used HEPA filtered vacuuming, at the time of their removal is not credible. The Department's

investigator also credibly testified that several of the bags containing the asbestos waste were torn and had pieces of asbestos containing waste protruding from them. Thus, the evidence establishes that respondent did not adequately wet the asbestos containing waste generated at the Fairfield property, or maintain those materials in leak-tight containers, as required by §19a-332a-5(j) of the Regulations. The Department, therefore, sustained its burden of proving these allegations.

With regard allegations 23b through 23d of the Charges, respondent admits these allegations. The Department, therefore, sustained its burden of proving them.

With regard to allegation 24 of the Charges, the evidence establishes that respondent failed to notify the Department regarding the asbestos containing transite siding it removed from the interior porch of the Fairfield Property, nor did respondent remit to the Department the fee required by §19a-332a(c) of the General Statutes for the removal of those materials. Since the porch in question was completely enclosed, and fully attached to the rest of the house, it constituted an interior asbestos abatement project requiring such notification and the payment of the appropriate fee. The Department, therefore, sustained its burden of proving these allegations.

H. Eighth Count

With regard to paragraphs 27 and 28 of the Charges, the evidence established that respondent committed each of the regulatory violations cited in these paragraphs on the dates alleged. The Department, therefore, sustained its burden of proving these allegations.

I. Ninth Count

With regard to paragraph 31 of the Charges, the evidence establishes that respondent committed each of the regulatory violations cited in these paragraphs on the date alleged. The Department, therefore, sustained its burden of proving these allegations.

J. Tenth Count

With regard to paragraph 34 of the Charges, the evidence establishes that respondent failed to provide the Department with a complete copy of the records it was required to maintain regarding the asbestos abatement it performed at the Fairfield Property. The Department, therefore, sustained its burden of proving this allegation.

With regard to paragraph 35 of the Charges, the evidence establishes that although respondent did provide partial information regarding the disposal of the asbestos containing materials generated at the Fairfield Property, the notice provided did not fully comply with the

applicable Regulations. The Department, therefore, sustained its burden of proving this allegation.

With regard to the allegations set forth in Counts 7 through 10 of the Charges, respondent raises one of the same defenses it did in connection with the allegations in Counts 1 through 5 of the Charges; *i.e.*, that the asbestos containing materials abated at the Fairfield Property were not friable and, thus, their removal did not constitute an asbestos abatement project within the meaning of the Regulations.

Respondent's defense is equally unavailing in connection to these allegations as it was regarding the previous ones. The evidence establishes that respondent removed the asbestos containing materials at issue in the current allegations with hand tools and that, as a result, there was considerable damage to those materials. Under the clear language of the Regulations, and long-standing and consistent interpretation of the Regulations by the Department, such disturbance converted those non-friable asbestos-containing materials into friable asbestos containing materials within the meaning of the Regulations. Removal of those asbestos-containing materials, therefore, constituted an asbestos abatement project within the meaning of the Regulations and, thus, required respondent to institute the applicable engineering controls.

Penalty

Pursuant to §19a-17 of the General Statutes and §20-440-6(b) of the Regulations, the Department requests that respondent's license be assessed a civil penalty of \$40,000 and that its license be suspended for six months. As discussed in greater detail below, respondent's license should be revoked not suspended, and the amount of the civil penalty reduced. However, to ensure the orderly completion of any asbestos abatement projects respondent is currently performing, respondent's license should be placed on probation before it is revoked.

The Regulations have a simple but critically important function – to protect the public health by eliminating or reducing the exposure of asbestos abatement workers and the general public to asbestos fibers. To accomplish these goals, the Regulations set forth an elaborate system of procedures and protocols that apply to every stage of an asbestos abatement project. The Regulations are entitled to a liberal interpretation to further this remedial purpose.

The record demonstrates a repeated and systematic failure on respondent's part to comply with these regulatory requirements. Its violations include: (1) failing to institute and maintain proper engineering controls during asbestos abatement projects at two work sites; (2) improper storage and disposal of asbestos containing waste at three work sites; and, (3) failing to maintain

and produce to the Department proper records and forms and/or remit required fees to the Department for work performed at three work sites. Many of these violations occurred multiple times at the same location.

Respondent's violations include leaving seven unsealed dumpsters of asbestos waste in a parking lot open to the public for over two months, and discarding asbestos containing waste onto neighboring properties at a residential beachfront property. Respondent also failed to adequately account for the disposal of the asbestos waste generated at all three of the abatement projects that are the subject of the Charges. Respondent's violations, therefore, exposed its own workers and members of the general public to asbestos containing materials, including "friable" asbestos that posed the greatest health risk.

In defense of its actions, respondent offered a strained legal argument that is inconsistent with the plain language of the applicable Regulations, the Department's consistent and long-standing interpretation of those Regulations, and the health risks posed by exposure to asbestos. Its factual defenses were implausible and strained credulity.

Respondent has been licensed by the state, under its current name or another one, since approximately 1997. Until 2003, Mr. Pero, respondent's owner and general manager, personally held licenses as an asbestos abatement site supervisor, asbestos abatement inspector, and asbestos abatement management planner (*see* §§20-440-1 (5), (21), and (23) of the Regulations), and he testified that he continues to take refresher courses in those fields. Mr. Pero, therefore, is intimately acquainted with the requirements of the Regulations as they pertain to asbestos abatement projects in Connecticut.

The Department has had numerous discussions with Mr. Pero over the years regarding his primary legal defense in this case. In the course of those discussions the Department explained to Mr. Pero that, pursuant to §19a-332a-1(w) of the Regulations, friable asbestos includes "non- friable asbestos containing material that *potentially* can be broken, crumbled, pulverized or reduced to powder as a result of asbestos abatement (emphasis added)." Tr. III, p. 126. This Regulation is premised on extrinsic evidence of the increased health risk posed by non-friable asbestos containing materials that are disturbed or broken during abatement. Tr. III, p. 126. Yet, Mr. Pero continues to ignore the specific language of the Regulation, and to substitute a contrary and more convenient interpretation of his own.

During the Department's investigation of the abatement of the Bridgeport and Fairfield properties the Department specifically reviewed the applicable regulatory requirements with

either Mr. Pero, or those in his employ, on numerous occasions. The record is replete with efforts by the Department to work with respondent to achieve regulatory compliance while allowing its abatement efforts to proceed. Unfortunately, the record is also replete with examples of respondent promising to take remedial actions to insure regulatory compliance only to ignore those promises on future occasions. Similarly, the record demonstrates that respondent failed to make available to the Department records it was required by the Regulations to maintain and make available to the Department upon its request, despite repeated requests from the Department for those very records.

Asbestos abatement contractors cannot cavalierly ignore the Regulations simply because they disagree with the language of those Regulations. Nor can they ignore requests for records they are required by law to maintain and make available to the Department upon its request. Respondent's conduct demonstrates a gross disregard for the Regulations, and for the health and safety of its own employees and the general public. Given this record, the relief requested by the Department is insufficient. While a significant civil penalty is fully justified by the record, that record warrants revocation of respondent's license, and not a suspension.

1. Civil Penalty

Section 19a-17(a)(6) of the General Statutes authorizes the Department to award a civil penalty of \$10,000 for each violation. As concluded above, respondent committed approximately fifty separate violations of the Regulations. Respondent could be assessed up to \$500,000 in civil penalties for these violations. Given the egregiousness of respondent's conduct, the number of violations, the repeated nature of several of the violations, and the risks those violations posed to its own workers and the general public, a significant civil penalty is fully supported by the record. However, given the revocation of respondent's license, as discussed below, the amount of the civil penalty should be reduced from the \$40,000 requested by the Department to \$30,000.

2. Probation

Section 19a-17(a)(5) of the General Statutes authorizes the Department to place a licensee on probationary status and require the licensee to report regularly to the Department upon the matters that are the basis for the probation. To ensure the satisfactory completion of any asbestos abatement projects respondent is currently performing, respondent's license should be placed on probation until all such projects are completed. During such probation, respondent should be required to provide the Department with a list of its current project, employ the

services of a licensed project monitor approved by the Department to oversee the completion of its current projects, and ensure that the project monitor provides written weekly reports directly to the Department certifying that respondent is performing those asbestos abatement project with reasonable skill and safety, and consistent with all applicable statutes and regulations.

3. *Revocation*

Section 19a-17(a)(1) of the General Statutes authorizes the Department to revoke an asbestos contractor's license. Given respondent's blatant disregard for the Regulations governing asbestos abatement in Connecticut, the repeated nature of several of those violations, and the risk those violations posed to its workers and the general public, respondent's license should be revoked once all of its current asbestos abatement projects are completed.

Order

Based on the record in this case, the above Findings of Fact and Conclusions of Law, and pursuant to §§19a-17(a) and 20-440 of the General Statutes, and §20-440-6(b) of the Regulations, the following Order is hereby issued concerning the asbestos contractor license of ECON, LLC, license number 000255:

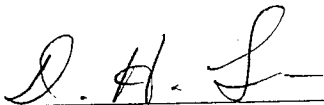
1. Respondent shall pay a civil penalty of \$30,000 by certified or cashier's check payable to "Treasurer, State of Connecticut." The check shall reference the Petition Number on its face, and shall be payable within thirty days of the effective date of this decision.
2. Respondent's license shall be placed on probation under the following terms and conditions:
 - (a) Within two weeks of the date of issuance of this decision, respondent shall provide the Department with a list of all asbestos abatement projects it has already commenced. (For purposes of this provision, "commenced" shall mean only those projects on which respondent has actually begun asbestos abatement activities, and shall not include projects for which it has submitted an approved work plan with the Department, but has not actually begun asbestos abatement activities.) The list shall include the following: (1) the address of each property being abated; (b) the name, address, and telephone number(s) of the owner(s) of the property; (c) a brief description of the abatement activities performed to date; (d) a brief description of the abatement activities remaining to be performed; and, (e) an estimated date of completion for the project.
 - (b) Within two weeks of the date of issuance of this decision, respondent shall obtain at its own expense, the services of a licensed project monitor ("the monitor"), pre-approved by the Department, to conduct on-site inspections of all asbestos abatement projects identified in compliance with paragraph 2(a) above, until all such projects are completed. (For purposes of this Order, "completion" shall mean

compliance with the post-abatement reoccupancy criteria set forth in §19a-332a-12 of the Regulations.)

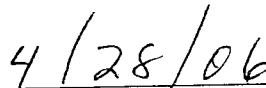
- (1) The monitor shall have the right to monitor any and all work on the projects by any means that he or she deems necessary to determine whether respondent is conducting the abatement in accordance with all applicable statutes and regulations.
 - (2) Respondent shall cooperate fully with the monitor.
 - (3) Respondent shall provide the monitor with the original records maintained on each asbestos abatement project monitored.
 - (4) Respondent shall cause the monitor to submit directly to the Department weekly written reports by the monitor on each project monitored stating:
(a) the current status of the project; (b) the nature and amount of abatement remaining to be performed; (c) the anticipated date of completion for the project; (d) whether the project reviewed is being performed with reasonable skill and safety and in compliance with all applicable statutes and regulations; and, (e) the dates, location, and duration of all site inspections and meetings with respondent's officers and employees.
 - (5) If the monitor determines at any time that respondent is not in compliance with any applicable statute or regulation, he/she shall immediately notify the Department of such non-compliance.
 - (6) During the period of probation, respondent is prohibited from engaging in any asbestos abatement project if the monitor is unavailable to monitor such project.
3. Respondent shall provide a copy of this Decision, and the list of current projects referred to in 2(a) above, to the monitor within 3 days of securing the services of the monitor.
4. Respondent's license shall be revoked upon completion of the last asbestos abatement project performed by respondent.
5. All originals of respondent's license shall be surrendered to the Department within ten days of completion of the last asbestos abatement project performed by respondent.
6. Respondent shall be responsible for all costs associated with satisfaction of this Order.

7. The civil penalty, and all originals of respondent's license, shall be sent to:

Ronald Skomro
State of Connecticut Department of Public Health
450 Capitol Avenue, MS #51AIR
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Hearing Officer



Date